

Supreme Court of Kentucky

ORDER

**IN RE: ORDER APPROVING CIRCUIT COURT LOCAL RULES, 39TH
JUDICIAL DISTRICT, BREATHITT, POWELL AND WOLFE CIRCUIT
COURTS**

Upon recommendation of the Judge of the 39th Judicial Circuit, Breathitt, Powell and Wolfe Circuit Courts, and being otherwise sufficiently advised,

The Local Rules for the Breathitt, Powell and Wolfe Circuit Courts are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 15 day of May, 2008.


CHIEF JUSTICE

**RULES OF PRACTICE AND PROCEDURE
FOR THE 39TH JUDICIAL CIRCUIT
BREATHITT, POWELL & WOLFE COUNTIES**

IN RE: ORDER ESTABLISHING LOCAL RULES

** ** ** ** **

For the purpose of complying with SCR 1.040(3)(a) the following local rules are hereby adopted pending final approval by the Chief Justice of the Kentucky Supreme Court:

APPLICATION AND EFFECTIVE DATE OF REGIONAL RULES

These Court Practice and Procedure Rules, 39th Judicial Circuit, Breathitt, Wolfe and Powell Counties, and the Kentucky Rules of Civil or Criminal Procedure and other law, in so far as applicable directly or by analogy, shall govern civil and criminal proceedings in the 39th Judicial Circuit unless the same conflict with any statute or other law of the United States or the Commonwealth of Kentucky, at any time legally adopted, in which event any such statute, law, rule, or order shall at all times prevail. The rules shall be effective April 1, 2008, provided they have first been approved by the Chief Justice of the Supreme Court of Kentucky.

**RULE NO. 1
MOTION DAYS AND MOTIONS**

(The following applies to all motions in either civil or criminal matters, except those permitted by law to be heard *ex parte*).

(A) **Powell County** Civil and Criminal Motion days shall be held on the first and third **Wednesday**, after the first Monday, of each month. **Wolfe County** Civil and Criminal Motion days shall be held on the first and third **Thursday**, after the first Monday, of each month. **Breathitt County** Civil and Criminal Motion days shall be held on the first and third **Friday**, after the first Monday, of each month. The Civil Motion hour will begin at the hour of 9:00 a.m. and the Criminal Motion hour will begin at the hour of 10:00 a.m. or directly after the Civil Motion hour has finished.

(B) The Clerk shall keep a motion docket in which there shall be docketed, in order, all motions filed with the Clerk no later than one week prior to the Court's Motion day. Any

motions filed thereafter shall be docketed on the following motion day unless otherwise agreed by the parties. On the call of the motion docket, the Court shall either rule on a motion, set it for a day to be heard, or continue it until the following motion day.

(C) At the time notice of the motion is served on the adverse party, a copy of the notice and motion shall also be furnished to the Judge of the Court at his address of P.O. Box 946, Jackson, Kentucky 41339, phone: 606-666-7130 (**if Counsel feels motion will be contested**) and proof of service on the Judge should be listed in the Certificate of Service. Failure to furnish such copy shall be cause for the Court to delay hearing of said motion until the next motion day, if the Court so desires.

(D) There shall be filed with each motion a brief statement of the grounds therefore, with citations of authorities relied upon, which may be set forth in the body of the motion, if the pleader so desires. If a party desires to respond or if the Court orders a response, the response to any motion shall be in similar form and shall be filed with the Clerk prior to the date set for the hearing of the motion unless a different time is fixed by the Court.

(E) In the event that a party is properly noticed for a motion, and is absent at the hearing of the motion without making proper arrangements for such absence, the Court may rule on such motion even in the absence of such party, although the Court may consider in lieu of such party's presence, a properly filed memorandum.

(F) All motions, including motions for summary judgment but excluding motions to set a pretrial conference or trial date, shall be filed with the tender of a **proposed Order** in conformity therewith, including such Orders that require findings of fact and conclusions of law. Such Orders shall be by separate styled instruments and not on the same page as the motion. This is not intended to delegate the Court's decision making power, but will be used solely for information and as a guide.

RULE NO. 2 **CONTINUED MOTIONS**

An attorney who will be unable to be present at the time set for a motion shall immediately contact the moving attorney and attempt to establish a mutually agreeable time for the hearing of the motion. Should this prove unsuccessful, the party desiring the continuance shall immediately file a motion for a continuance in writing, stating the reasons for the continuance, and shall send a copy directed to the attention of the Judge as well as filing it with the Clerk. If a continuance is obtained, whether it be by agreement or not, the party seeking the continuance shall re-file the motion and re-notice the parties.

RULE NO. 3 **DRUG COURT**

Beginning on April 7, 2008, drug Court for Breathitt and Wolfe Counties shall be held every other Monday in Breathitt County at 3:00 p.m. If a holiday falls on a Drug Court date, Drug Court shall be held on the following Monday and then every other Monday thereafter.

RULE NO. 4
VIDEOTAPED DEPOSITIONS

Upon appropriate motion of a party pursuant to CR 30.02(4) or RCr 7.18, a deposition may be videotaped and used in accordance with law, subject to the following:

(A) Due notice shall be given of the time and place of the taking of the depositions and of the witnesses to be taken, unless said matters are agreed upon by the parties, as in other cases.

(B) Each deposition shall be taken before an officer duly qualified to administer the oath to the witness and to certify that the record thus made is accurate and complete.

(C) In addition to the videotape recording of each deposition, there shall be furnished to the Court, for the purpose of ruling upon objections in advance of trial, a **typewritten transcript** of the verbal testimony and all objections thereto, duly certified to be accurate and complete. Upon motion of either party, the Court will review the typewritten transcript at a hearing with respective counsel prior to trial, rule upon objections, and, upon the basis thereof, will direct the excision from the videotape of all material properly objected to, preserving the excised portion for the purposes of any appeal.

(D) When completed, the videotape and typewritten transcript of each deposition thus taken shall be transmitted to the Clerk of the Court by the reporter who took the same, in the manner required by law.

RULE NO. 5
PRETRIAL CONFERENCES AND
ASSIGNMENT OF CASES FOR TRIAL--CIVIL CASES

Any party desiring a trial date shall file a motion entitled "Motion to Set for Trial" which shall be placed on the motion docket. At the hearing on the motion, the Court shall set a date for a trial, unless a party objects and the Court finds that the case has not sufficiently progressed to be assigned for a pretrial conference. Unless otherwise ordered by the Court, or except for good cause shown, the parties shall :

(A) **Seven days** prior to trial, each party shall submit a tendered Witness List and Exhibit List to all other parties. Counsel shall tender proposed Jury Instructions on the first day of trial for the Court's review.

(B) If the parties desire a pre-trial conference, any party to the suit may notice the pre-trial conference at the last regularly scheduled motion hour prior to the trial date. If any of the parties feel there are issues that must be addressed prior to trial via a pretrial conference, the parties are encouraged to contact the Judge's office at 606-666-7130 and either a special time and date will be set for a pretrial conference or a pre-trial telephone conference can be held.

(C) Prior to the trial date, counsel for the parties shall meet, or confer by telephone, for a final discussion of (1) possibility of settlement, and (2) preparation of written stipulation of all possible facts, and shall advise the Court that such final conference was held and the results thereof.

(D) Once a trial date has been set, neither party shall be granted a continuance

unless the Court is satisfied that the reasons were both unavoidable and unforeseeable on the setting date.

RULE NO. 6
CLASS D FELONY PRETRIAL DIVERSION

Pretrial diversion is the postponement of imposition of sentence upon any person who qualifies for this program, for a period of time not to exceed five (5) years, subject to certain conditions established by the Court.

PERSONS ELIGIBLE are as follows:

A. Any person charged with a Class D felony, who has not had a felony conviction in the ten (10) years prior to commission of the current offense, or who has not been on felony probation or parole or released from felony incarceration within the ten (10) years prior to commission of the current offense, shall be eligible for pretrial diversion.

B. The person charged must enter a plea of guilty before becoming eligible for pretrial diversion.

C. Persons ineligible for probation, parole or conditional discharge under KRS 532.045 shall be ineligible for this program.

D. A person convicted of a Class D felony for which early release is disallowed by statute, including KRS 189A.010(8) and KRS 189A.120(2) shall be ineligible for this program.

E. No person shall be eligible for this program more than once in any five (5) year period.

RULE NO. 7
PROCEDURE IN CRIMINAL CASES

At the time of arraignment, each case shall be assigned a time for pretrial conference. Pre-trial conferences shall be held as a matter of course in all criminal cases. At the pretrial conference, the case shall be assigned for trial on a day certain or may be continued for further action.

RULE NO. 8
MASTER COMMISSIONER

(A) All signed Judgments and Orders of Sale must be sent to the Master Commissioner's office within ten (10) days of the Judge's signature.

(B) Sales cannot occur outside the time specified in the Judgment and Order of Sale. If the specified time expires, there must be a new Order setting forth a later sale date.

(C) Sales may only be cancelled through the Master Commissioner's office and Circuit Judge's office in writing.

(D) If a sale is cancelled, the Master Commissioner Fees and Costs will be filed and paid in accordance with law.

RULE NO. 9

JURY SELECTION

This Court hereby adopts the procedures set forth in the "Administrative Procedures of the Court of Justice: Part II, Jury Selection and Management, Section 5.11, to be implemented as follows:

The computer services of the Kentucky Board of Elections (Office of the Secretary of State) shall be used.

RULE NO. 10 **ENTRY OF ORDERS AND JUDGMENT AND SERVICE**

(A) In all civil cases in which a verbal Order or Judgment is announced by the Judge, and in the case of a jury verdict, an Order or Judgment in conformity therewith shall be prepared by counsel for the prevailing party within seven (7) work days after the Order or Verdict, unless directed otherwise by the Judge. It shall also include "prepared by." If the party against whom the Order or Judgment is entered is not represented by counsel, that fact shall be endorsed thereon.

(B) All criminal Judgments shall be prepared and completed by counsel for the defense and presented to the Commonwealth of Kentucky for review prior to Judgment entered by the Court.

(C) When signed by the Judge, the Order or Judgment shall be delivered to the Clerk for entry. Counsel preparing the Order or Judgment shall also deliver to the Clerk a sufficient number of copies together with properly addressed stamped envelopes to permit the Clerk to complete service thereof when required by CR 77.04. Counsel may waive in writing service of any Order or Judgment and Notice of Entry.

(D) The Court will sign all Agreed Orders signed by all counsel of record or by parties not represented by counsel who are affected by the Order with the exception of Orders continuing the trial of any case. The disposition of such Orders shall not appear on the motion day docket and counsel for the parties affected by such Orders need not appear before the Court.

RULE NO. 11 **DISTRIBUTION OF ORDERS**

The Circuit Clerk shall distribute copies of all Orders by mail or delivery to the persons listed under DISTRIBUTION and shall certify mailing or delivery by making a check mark by the person listed and shall initial and date the same at the bottom of the Distribution list. It shall be the responsibility of the party preparing the Order to make sure that all Orders contain a Distribution list as set out in the example below.

DISTRIBUTION:

John R. Doe, Esq.

P.O. Box 987

Jackson, KY 41339 ()

(Clerks initials & date)

RULE NO. 12

DEFAULT JUDGMENTS

A party seeking a judgment by default where CR 55.01, 5.01, or 6.03 apply shall file a written motion for such a judgment, which must appear on the motion docket. Said motion shall be accompanied by the movant's certificate, as stated in CR 55.01. Counsel for the movant (or its designee counsel) shall appear in person at the motion hour designated or the **motion will not be considered**. Any judgment by default entered by the Court shall, as a part thereof, state that the movant has furnished the certificate as required by CR 55.01.

RULE NO. 13 ANSWERS TO INTERROGATORIES OR REQUESTS FOR ADMISSIONS

When answering interrogatories or requests for admissions, the replying party shall set forth immediately preceding each answer the question or the request to which the answer is responsive.

RULE NO. 14 DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE

When any action has remained on the Civil Docket for one (1) year without any step being taken indicating an intention to prosecute said action, the action may be dismissed for want of prosecution on motion of either party or on the Court's own motion.

RULE NO. 15 PUNCTUALITY, EXPEDITION AND SETTLEMENT

(A) Attorneys will make every effort consistent with the legitimate interest of their client to expedite litigation and to avoid unnecessary delays.

(B) Attorneys shall be punctual in all court appearances and shall give prompt notice to the Court and to all other counsel in the case, of any circumstances requiring his or her absence or tardiness.

(C) Attorneys shall make a reasonable effort to settle the dispute of their client prior to court appearances. They will promptly inform the court of any settlement, partial or entire, with any party or of the continuance of any matter set for hearing or trial.

RULE NO. 16 APPEALS

Upon appeal to the Kentucky Court of Appeals or Kentucky Supreme Court of any case of the Circuit herein, it shall be the duty of the attorney for the appellant to notify the Court Reporter for the 39th Judicial Circuit (if applicable) immediately in order that the court reporter may begin preparing the written transcript if a written transcript is desired by the appellant. The purpose of this Rule is ensure that the court reporter has ample time to prepare the written transcript, and the court reporter not be informed at the last minute (perhaps, in five days) that said written transcript is due at the reviewing Court. The Clerk

of the Court shall also immediately inform and mail a copy of the designation of record, upon filing, to the stenographer responsible for the written transcript, if any. This Rule will ensure that the appeal is expedited as promptly and efficiently as possible for the reviewing Court.

So ORDERED this 27th day of March, 2008.


FRANK A. FLETCHER, Judge
39th Judicial Circuit